

United States Court of Appeals  
for the Fifth Circuit

United States Courts  
Southern District of Texas  
FILED

September 20, 2023

Nathan Ochsner, Clerk of Court

United States Court of Appeals  
Fifth Circuit

**FILED**

September 20, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

BRIAN SWIENCINSKI,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:18-CR-368-1

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ORDER:

IT IS ORDERED that Appellant's unopposed motion to view and obtain sealed documents is GRANTED.



KURT D. ENGELHARDT  
*United States Circuit Judge*

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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Suite 115  
NEW ORLEANS, LA 70130

September 20, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-20163 USA v. Swiencinski  
USDC No. 4:18-CR-368-1

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

*Christina Rachal*

By:

Christina C. Rachal, Deputy Clerk  
504-310-7651

Mr. Brandon Nelson McCarthy  
Ms. Carmen Castillo Mitchell  
Mr. Nathan Ochsner  
Mr. Jeremy Raymond Sanders  
Mr. Robert Thomas Smith  
Mr. Michael A. Villa Jr.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

*Appellee,*

No. 23-20163

v.

BRIAN SWIENCINSKI,

*Defendant-Appellant.*

**DEFENDANT-APPELLANT BRIAN SWIENCINSKI'S UNOPPOSED  
MOTION TO ACCESS AND OBTAIN SEALED DOCUMENTS**

Pursuant to Federal Rule of Appellate Procedure 27 and Fifth Circuit Rule 27, Defendant-Appellant, Brian Swiencinski, files this Motion to Access and Obtain Sealed Documents, and in support states the following:

1. On September 14, 2023, the electronic Record on Appeal was filed in the above-captioned case.
2. Several documents and exhibits in the district court's record were filed under seal for various reasons, including because those documents contain PHI of third parties, bank-account information of third parties, as well as information related to plea negotiations and governmental investigations.

3. Mr. Swiencinski moves this Court to allow counsel for Mr. Swiencinski to view and obtain restricted or otherwise sealed documents contained in the Record. Specifically, Mr. Swiencinski requests that counsel be permitted to view:

- All restricted Trial Exhibits filed at Dkt 530 (Breimeister's Exhibits)
- All restricted Trial Exhibits filed at Dkt 528 (Redko's Exhibits)
- All restricted Trial Exhibits filed at Dkt 527 (McAda's Exhibits)
- All restricted Trial Exhibits filed at Dkt 516 (Swiencinski's Exhibits)
- The Trial Exhibit filed at Dkt 491 (Ince's Exhibit)
- Sealed Event(s) filed at Dkt 508, 503, 489, 443, 442, 412, 411, 410, 409, 401, 400, 397, 396, 391, 386, 385, 381, 379, 378, 370, and 368.

4. The ability to access the documents is necessary for Mr. Swiencinski's counsel to represent Mr. Swiencinski on appeal, and effectively prepare for Mr. Swiencinski's opening brief.

5. Counsel for Mr. Swiencinski conferred with counsel for the government regarding this request to access and obtain restricted documents, and the government stated that it is unopposed to this request.

WHEREFORE, Defendant-Appellant, Brian Swiencinski respectfully asks this Court to grant his Motion to Access and Obtain Sealed Documents.

Dated: September 19, 2023.

Respectfully submitted,

/s/ Robert T. Smith

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*Counsel for Defendant-Appellant  
Brian Swiencinski*

**CERTIFICATE OF COMPLIANCE**

1. This Motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because the Motion contains 276 words, excluding those parts exempted by Fed. R. App. P. 32(f).
2. This Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5), and the type style requirements of Fed. R. App. P. 32(a)(6), because it is prepared in proportionately spaced typeface using Microsoft 365 in 14-point font size and Book Antiqua type style.

/s/ Robert T. Smith

Robert T. Smith

*Counsel for Appellant Brian  
Swiencinski*

**CERTIFICATE OF SERVICE**

I, Robert T. Smith, certify that on September 19, 2023, this Motion was filed with the Clerk of the United States Court of Appeals for the Fifth Circuit using the electronic case filing system, which in turn sent an electronic copy of this Motion to all attorneys of record in this case.

*/s/ Robert T. Smith*

Robert T. Smith  
Counsel for Appellant Brian  
Swiencinski